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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,252	11/04/2003	Philip R. Kwok	4398-303	3755
23117	7590	05/17/2006	EXAMINER	
NIXON & VANDERHYE, PC			PATEL, NIHIL B	
901 NORTH GLEBE ROAD, 11TH FLOOR			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22203				3743

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/700,252 Nihir Patel	KWOK ET AL. Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02.21.2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-46 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 30 is/are allowed.  
 6) Claim(s) 1-29,31-35 and 37-44 is/are rejected.  
 7) Claim(s) 36, 45 and 46 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. The terminal disclaimer filed by the applicant on February 21<sup>st</sup>, 2006 has been disapproved since the attorney of record did not sign it. Therefore claims 17-29 are still rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of US Patent 6,532,961 and claims 17, 19, 20 and 23-29 are still rejected under the judicially created doctrine of obviousness-type double patentable as being unpatentable over claims 1, 4-6, 19, 21 and 27 of US Patent 6,860,269.
2. In response to claim 30, the examiner agrees with the applicant's arguments and 112, first paragraph rejection has been withdrawn.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 31-35 and 37-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Eaton et al. (US 2004/0045551).
5. As to claim 31, Eaton teaches a respiratory mask assembly that includes a mask 14" and a forehead support 40" (see figures 3 and 5) secured to the mask with a joining member 76', the forehead support including a cushion frame assembly adjustably mounted to the joining member, wherein the cushion frame includes first and second forehead cushions (see figure 3), the

cushion frame is adapted to move relatively to the joining member (**see figure 3**), the cushion frame is selectively positionable at least four predetermined, discrete positions relative to the joining member (**see figure 5**), the cushion frame includes a tongue 78' (**see figure 5**) adapted to be received in one of at least four recesses 82' (**see figure 3**) provided on the joining member 76' so as to positively position or engage the cushion frame and joining member at one of the at least four or more predetermined positions to change the angular position of the cushion frame relative to the wearer's forehead in use.

6. **As to claim 32**, Eaton teaches an apparatus wherein the cushion frame includes a slotted head strap connector portion at each lateral end of the cushion frame (**see figure 5**).

7. **As to claim 33**, Eaton teaches an apparatus wherein the mask includes a mask shell and a nasal mask cushion (**see figure 3**)

8. **As to claim 34**, Eaton teaches an apparatus wherein the cushion frame is adapted to move relative to the joining member along a curved path (**see figure 5**)

9. **As to claim 35**, Eaton teaches an apparatus that further comprises a gas supply connector incorporated into the mask with the joining member, such that supply gas flows through or past the forehead support (**see figure 3**).

10. **As to claim 37**, Eaton teaches an apparatus wherein the first and second cushions are made of silicone.

11. **As to claims 38**, Eaton teaches an apparatus wherein the cushion frame cannot move beyond a predetermined maximum position in at least one direction (**see figures 3 and 5**).

12. **As to claim 39**, Eaton teaches an apparatus wherein the cushion frame cannot move beyond predetermined position in each direction (**see figures 3 and 5**).

13. **As to claim 40,** Eaton teaches a respiratory mask (**see figures 3 and 5**), and a forehead support **40”** secured to the mask **14”** via a main body **76’**, the forehead support including a cushion frame adjustably mounted to the main body (**see figures 3 and 5**); wherein the cushion frame is positively positionable or engagable in at least four predetermined positions relative to the wearer’s forehead via a tongue adapted to be received in one of at least four recesses in the main body so as to positively position or engage the cushion frame and main body in one of the at least four predetermined positions, and an angle of the cushion frame relative to the wearer’s forehead in use in different in each of the at least four predetermined positions (**see figures 3 and 5**).

14. **As to claim 41,** Eaton teaches an apparatus wherein the mask includes a passage through which pressurized breathable gas is supplied through or past the forehead support (**see figures 3 and 5**).

15. **As to claim 42,** Eaton teaches an apparatus wherein each end of the cushion frame include at least one slotted head strap-receiving portion (**see figures 3 and 5**).

16. **As to claim 43,** Eaton teaches an apparatus wherein the mask includes a mask shell and a nasal mask cushion (**see figure 3**).

17. **As to claim 44,** Eaton teaches an apparatus wherein the cushion frame is adapted to move relative to the joining member along a curved path (**see figure 5**).

*Allowable Subject Matter*

18. Claim 30 is allowed.

19. Claims 36, 45 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

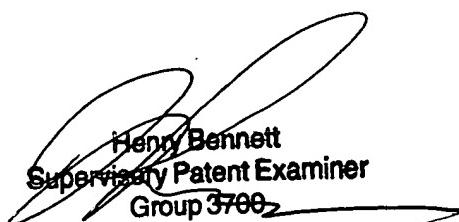
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel  
Art Unit 3743



Henry Bennett  
Supervisory Patent Examiner  
Group 3700